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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,223	04/09/2001	Edward J. Koplar	55121-88021	8583
22807	7590	05/22/2006	EXAMINER	
GREENSFELDER HEMKER & GALE PC SUITE 2000 10 SOUTH BROADWAY ST LOUIS, MO 63102			SRIVASTAVA, VIVEK	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/829,223	KOPLAR ET AL.
	Examiner	Art Unit
	Vivek Srivastava	2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 February 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 26,27,31 and 49-82 is/are pending in the application.
- 4a) Of the above claim(s) 54-72 is/are withdrawn from consideration.
- 5) Claim(s) 73-82 is/are allowed.
- 6) Claim(s) 26,27,31,49 and 52 is/are rejected.
- 7) Claim(s) 50,51 and 53 is/are objected to.
- 8) Claim(s) 54-72 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

Newly submitted **claims 54 - 72** directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the new claims are directed to games over a television broadcast network classified in class 463 subclass 40.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54 – 72 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

Applicant argues claim 26 has been amended to recite the further limitation that a visual image is displayed on the monitor that broadcasts the auxiliary data from the visual image as a result of the use of the computer system by a user of the hand held device.

Nemirofsky discloses the monitor can be a computer and monitor and hence a computer system. Necessarily, the visual image is displayed as the user uses the

computer and monitor or “computer system”. It is noted that Nemirofsky teaches the amended limitation.

Applicant argues, a review of Nemirofsky shows that the scan detector circuit (150) is optically bonded to the LCD (42), for the purpose of detecting a laser scan during a scan of a bar code visually presented on the LCD. In contrast, Applicants laser detection hardware is electronically connected to the microprocessor for the purpose of triggering a code or alphanumeric message on the LCD that is to be visually read by a cashier. Applicant's LCD is not scanned when the scan is received by laser detection hardware.

Applicant's specification does support any distinction between the photodetector and laser detection hardware. In fact, Applicant's specification discloses “A photodetector is required to detect the laser light” (se page 31 lines 6 – 7). Based on the support provided by Applicant's, it appears the laser detection hardware is part of the photodetector. Since the photodetector in Nemirofsky detects laser light, which is correctly pointed out by Applicants (see third paragraph on page 12), Nemirofsky meets the claimed limitation. Referring to Applicant's response, Applicants argue “*A review of Nemirofsky shows that the scan detector circuit (150) is optically bonded to the LCD (42), for the purpose of detecting a laser scan during a scan of the bar code visually presented on the LCD*”. The Examiner submits that the photodetector of Nemirofsky meets the claimed photodetector and laser detection hardware of Applicant's.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 27, 31, 49 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Nemirofsky (US 5,953,047 – cited by Applicants).

Regarding claim 26, Nemirofsky discloses a television signal activated interactive smart card method and system for visually transmitting auxiliary data from a monitor for a computer system (see col 3 lines 41 – 47) to a handheld smart card (see col 7 lines 20 – 43) having an optical detector (col 3 lines 42 – 47 and col 7 lines 20 – 43). The auxiliary data is transmitted from the monitor to the handheld device by facing or ‘manipulating’ the handheld device to the monitor (see col 11 lines 15 – 23).

Nemirofsky further discloses transmitting the auxiliary data from the display device to the hand-held device periodically or at ‘discrete times’ during the video presentation when Card logo or icon is displayed (see col 11 lines 16 – 24).

Nemirofski further discloses the auxiliary data is modulated and thus inherently is demodulated to provide the auxiliary data enabling a user to take the card to a point of sale to purchase a product (see col 6 lines 43 – 48, col 7 lines 37 – 43, col 11 lines 23 – 32).

Nemirofsky discloses transmitting a graphic video image i.e. UPC code to hand held smart card wherein the bar codes can be displayed (see col 11 lines 20 - 50). It is noted that according to the Microsoft Press Computer Dictionary, Third Edition, video, in relation to computers and computer systems, is defined as rendering of text and graphic images on a display

Nemirofsky further discloses while the TV cardholder is watching television or computer system, the TV Card Logo or icon is periodically displayed on the screen indicating that the card-readable data is available thus Nemirofsky discloses the claimed "selectively initiating the execution of an application program available on the computer system that displays a visual image on the monitor that broadcasts the auxiliary data form the visual image as a result as a result of the use of the computer system by a user of the hand-held device". It is noted that the auxiliary data is broadcasted when the user uses the computer system.

Nemirofsky discloses receiving the optical data on the handheld smart card via an optical detector (see col 3 lines 42 – 47 and col 7 lines 20 – 43).

Nemirofski discloses the processing the received auxiliary data and providing promotional opportunities which can be redeemed at a point of sale, wherein the promotional opportunities include money, discounts, value, UPC codes etc, (see col 11 lines 23 – 48).

Regarding claim 27, Nemirofsky discloses the program or 'application program' on a video recording device for reading by the smart card at a later time (see col 4 lines 30 – 35). It is noted that program is stored in a memory in the computer system,

wherein the computer system links the storage to the handheld device, as a result, Nemirofsky teaches the claimed limitation.

Regarding claim 31, Nemirofsky discloses television activated interactive smart card system used for the redemption of promotional opportunities including money, discounts, value, UPC codes etc. (see col 11 lines 23 – 48).

Nemirofsky discloses the smart card comprises a microprocessor 20 (see fig 5) embedded in the card, a random access memory 30 and programmable memory 26 electronically connected to the microprocessor 20, and liquid crystal display 42 electronically connected to microprocessor 20 and random access memory 30 and programmable memory 26.

Nemirofsky further discloses a photodetector / scan detector being electrically coupled to microprocessor 20 and memory 36 and 30 (see fig 5), the photo detector is capable of detecting light from a conventional bar code scanner (see col 8 lines 57 – 60, col 9 lines 30 – 33, col 11 lines 23 – 52).

Nemirofsky further discloses a laser detection hardware for detecting the laser light in photodetector 150 means met by the photo detector / scan detector 150 which electronically connected to the microprocessor 20 (see col 14 lines 50 – 55, col 7 lines 58 – 61, fig 5).

Regarding claim 49, Nemirofsky inherently discloses the laser detection hardware is electronic/optical circuit since optical-electrical conversion must be present.

Regarding claim 52, Nemirofsky inherently discloses an application program in the computer as it is necessarily for system operation. Since the Nemirofsky does not

disclose the configuration of the computer system and how the application program acts with respect to the configuration, Nemirofsky inherently discloses the claimed “application program acts independently of the configuration of the computer system”. It is noted that the claim fails to define what the application program is and as a result, the application program can be interpreted as being an program relied upon the computer system for system operation.

Allowable Subject Matter

Claims 50, 51 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 73 – 82 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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